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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,623	02/26/2004	Marcio Marc Abreu	P67821US2	2057
13% 7590 05/11/2010 JACOBSON HOLMAN PLLC 400 SEVENTH STREET N.W. SUITE 600 WASHINGTON, DC 20004			EXAMINER WINAKUR, ERIC FRANK	
			ART UNIT 3768	PAPER NUMBER
			MAIL DATE 05/11/2010	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

10/786,623

**Applicant(s)**

ABREU, MARCIO MARC

**Examiner**

Eric F. Winakur

**Art Unit**

3768

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 January 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 32, 33 and 47 is/are pending in the application.
- 4a) Of the above claim(s) 33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 32 and 47 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-06)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 32 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cheslock et al. Cheslock et al. teach a measurement arrangement (Figures 2, 4A, 4B; column 7, line 44 - column 8, line 53) with a heat sensing probe 66 and a cover 50 where the cover includes an opening 64 that light passes through and a passageway between the opening and the sensing end of the probe. Cheslock et al. further disclose that the arrangement "may include" (column 10, line 39 - column 11, line 17) a barrier 70, indicating that the invention of Cheslock et al. may be implemented without the barrier thereby having light directly enter the opening. As discussed in the prior action, the only disclosure of the instant application regarding the claimed "window" indicates that it is a physical object. Although Applicant notes that Figure 71C does not particularly detail this element, this does not indicate that it was not present, as the Specification explicitly provides evidence of its presence and the claims require such an element. Therefore even when implemented with the barrier 70, Cheslock et al. is considered to meet the claim requirements. Cheslock et al. do not particularly set forth details of claimed dimensions or ratios of dimensions, but 1) give values for other dimensions (column 8, line 65 - column 9, line 3) and 2) detail that distances between

the window and sensing end of the probe can be determined (column 11, lines 18 - 30). As such, without criticality or unexpected results, it would have been obvious to one of ordinary skill in the art at the time of the invention to perform routine experimentation to determine appropriate dimensions for the passageway portion.

3. Claims 32 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Egawa. Egawa teaches a radiation thermometer (Figures 1, 2, 7 and descriptions thereof in columns 4 and 8 - 9) that includes an elongated light guiding tube 8, an infrared sensor 10, and a window 7. Although Egawa does not provide particular dimensions of the light guiding tube, there is an indication that the arrangement is intended for use in an ear for measuring emissions from an eardrum, which gives guidance to relative dimensions of the elements. It would have been obvious to one of ordinary skill in the art at the time of the invention to determine and use dimensions appropriate for an intended measurement location, since it has generally been held to be within the skill level of the art to produce an invention for its intended purpose and to optimize an arrangement for implementing such a purpose. Although Applicant notes the presence of wavelength filter 7 in the arrangement of Egawa, such an element is not outside of the claimed language of a "window configured for directly receiving all of the radiation energy", as the "window" may be met by a physical object (per the discussion in the paragraph above) and there is no other element in Egawa that keeps the filter from "directly receiving all of the radiation energy".

***Response to Arguments***

4. Applicant's arguments, see remarks, filed 1/28/10, with respect to the rejection under 35 USC 112, first paragraph have been fully considered and are persuasive in view of the amendments to claim 32. The rejection of claims 32 and 47 has been withdrawn.

5. It is noted that although no art rejections were set forth in the prior Office action, Applicant has included remarks regarding the references applied above. The statements of the rejections set forth above address those arguments.

#### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric F. Winakur whose telephone number is 571/272-4736. The examiner can normally be reached on M-Th, 7:30-5; alternate Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long Le can be reached on 571/272-0823. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Eric F Winakur/  
Primary Examiner, Art Unit 3768